

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2011- 04984

BETWEEN

PHILLIP LOUIS
(a.k.a. SAGAR MANNING)
KEN GORDON
(a.k.a. KENT GORDON)
JOCELYN MANNING

Claimants

AND

WILFRED DES VIGNES

Defendant

BEFORE THE HONOURABLE MADAM JUSTICE JUDITH JONES

Appearances:

Ms. D. Allison Prowell instructed by Ms. C. Flemming for the Claimants.

Mr. L. Phillips instructed by Mr. L. Phillips II, for the Defendant.

RULING (ORAL)

1. On the 1st June 2007 the Defendant herein (“Des Vignes”) commenced an action. (“the first action”) against two of the Claimants herein (Manning and Gordon) seeking damages in trespass to a parcel of land (“the larger parcel of land”) which parcel of land is described as comprising two roods and 10 perches save and except two parcels of land the first comprising approximately 2500 ft.² (“the first tenant’s plot”) and the

second comprising 10,000 ft.² (“the second tenant’s plot”). The first action also sought an order for possession of the first tenant’s plot.

2. By the first action Des Vignes claimed to be the owner in possession of the larger parcel of land and the landlord of Manning of the first tenant’s plot. The first action was never served on Gordon. Insofar as the First Defendant is concerned Des Vignes alleged that the First Defendant was in breach of two conditions of the tenancy agreement in that (i) she constructed a concrete annex to the wooden building on the first tenant’s plot and (ii) she unlawfully entered the larger parcel of land.

3. On 30th January 2008 an application was made by Des Vignes for judgement against Manning in default of defence. On 8th May 2008 judgement was granted in default of defence in favour of Des Vignes against Manning with respect to paragraphs 1, 2 and 4 of the statement of case. Paragraphs 1 and 2 of reliefs of the statement of case sought damages for trespass of the larger parcel of land and possession of the first tenant’s plot. Manning sought to set aside the order of 8th May 2008 but the application was dismissed. There has been no appeal of this order.

4. The effect of the order in the first action, therefore, is that Des Vignes was adjudged able to found an action in trespass against Manning with respect to the larger parcel of land, Manning’s tenancy in the first tenant’s plot was determined and possession of it was granted to Des Vignes. In essence the cause of action pursued

successfully against Manning in the earlier proceedings arose out of (i) the relationship of landlord and tenant that existed between Des Vignes and Manning at the time with respect to the first tenants plot and (ii) the fact that Des Vignes' right of possession to the larger parcel of land was superior to Manning's.

5. By the instant action Philip Lewis, ("Lewis"), Gordon and Manning (collectively called "the Claimants") seek as against Des Vignes an order that they, jointly or severally, have been in the exclusive and continuous and undisturbed occupation of a parcel of land situate in the parish of St Andrew comprising 2280.8 m² since the year 1983. In the alternative they claim an entitlement to a statutory lease under the Land Tenants Security of Tenure Act. It is not in dispute that the land the subject matter of this action is the same as the larger parcel of land in the first action or that the land described as the first tenant's plot in the first action forms a part of the land the subject matter of this action.

6. By this application Des Vignes applies to have the Claimant's statement of case struck out on the ground that the issue of possession has already been determined by a court in an earlier action. Des Vignes submits therefore that the principle of res judicata applies and that a continuation of these proceedings would amount to an abuse of process.

7. The Claimants submit that res judicata does not apply in the instant case since for the doctrine to apply there must be (i) an earlier final decision on the merits of the issue and (ii) that decision must involve the same parties, or parties in privity with them.

8. The first obvious point for consideration is that the first action was pursued against Manning alone. The Defendant says that this is irrelevant because of (i) the blood relationship between the Claimants; and (ii) the First and Second Claimants were clearly aware of the first High Court action and made no attempt to be joined in order to defend it.

9. While res judicata applies to privies of the original parties as if they have been parties to the litigation, on the facts presented it cannot at this stage be said that either Lewis or Gordon are the successors in title of Manning or that they share the same interest in the land. The mere fact that they may claim a blood relationship is in my opinion of no relevance to the question of whether they are privys of Manning. Neither does the fact that they are joint Claimants in this action leads to that conclusion at this stage since in these proceedings the Claimants allege that they have been jointly or severally in the exclusive occupation of the land. Further, contrary to the submissions of Des Vignes, there are no facts before me which suggest that either of these Claimants were aware of the first High Court action.

10. With respect to the second point they submit that there has not been a decision on the merits. It is clear that the decision being a default judgment was not a judgment on the merits. It is however a final judgement and conclusive judgment on the cause of action pursued in the first action. While I accept that issue estoppel will not arise in the circumstances the fact that it was a default judgement does not prevent the existence of a cause of action estoppel. But such an estoppel will be strictly confined to the precise cause of action upon which the default judgement was given: **Zuckerman Civil Procedure second edition, page 943, paragraph 24.74**

11. I find therefore that, as between Des Vignes and Manning, there arises a cause of action estoppel with respect to the cause of action the subject matter of the earlier action. In other words in these proceedings Manning is estopped from denying the facts upon which the default judgement was based.

12. As I understand the submissions of Des Vignes it is that, even if res judicata in the strict sense does not apply, to allow the Claimants to pursue this action would amount to an abuse of the process of the court. Perhaps the simplest way of dealing with this submission is to adopt the statement of Auld LJ in the case of **Bradford and Bingley Building Society v Seddon [1999] 4 All ER 217 at page 225:**

“In my judgement it is important to distinguish clearly between res judicata and abuse of process not qualifying as res judicata..... the former in its cause of action estoppel form is an absolute bar to relitigation and in its

issue estoppel form also, save in special cases or special circumstances.....

The latter, which may arise where there is no cause of action or issue estoppels, is not subject to the same test, the task of the court being to draw the balance between the competing claims of one party to put his case before the court and of the other not to be unjustly hounded given the earlier history of the matter..... Thus abuse of process may arise where there has been no earlier decision capable of amounting to res judicata (either or both because the parties or the issues are different), for example, where liability between new parties and/ or determination of new issues should have been resolved in the earlier proceedings. It may also arise where there is such an inconsistency between the two that it would be unjust to permit the latter one to continue.”

It is this discretionary jurisdiction that Des Vignes seeks to invoke.

13. In the instant case the Claimants seek two types of relief. The first is with reference to a claim in adverse possession, the second is with reference to a claim to a tenancy pursuant to the Land Tenants Security of Tenure Act. Insofar as the claim pursuant to the Land Tenants Security of Tenure Act is concerned they allege that upon the passing of the Act in June 1981 a statutory tenancy of 30 years in the first instance was created. As a result they seek an order that they are entitled to a statutory lease under that Act.

14. In this regard, they are faced with certain difficulties. The 30 year period granted by the Act expired in 2011. Accordingly they would only have been entitled to a renewal of the statutory lease for further period of 30 years upon the service of a notice on the landlord in accordance with section 4 of that Act. The statement of case makes no reference to the service of any notice within the time limited by the Act or at all. The Claimants therefore have not placed before the Court facts sufficient for them to be entitled to this relief. In the circumstances the statement of case does not reveal any grounds for pursuing this cause of action. In any event, such a fact, that is the service of a notice in accordance with the Act, would be inconsistent with their claim in adverse possession. In my opinion therefore insofar as the Claimants seek an order that they are entitled to relief pursuant to the Land Tenants Security of Tenure Act, such a claim must be struck out.

15. This leaves the Claimants with their claim in adverse possession. In the earlier action Des Vignes sought to exercise his rights against Manning, as a landlord with respect to 2500 ft.² of the land i.e the first tenants plot, and as the owner with respect to the larger parcel. While a cause of action estoppel arises with respect to Manning insofar as her tenancy of the 2500 ft.² of land is concerned and the acts of trespass on the larger parcel of land, it would seem to me that looking at the actions in the round there is not such an inconsistency between the two actions as to amount to an abuse of the process of this court. Ignoring for the moment the first tenants plot, the case as presented by the Claimants is that at all material times their occupation of the land was contrary to

the interest of the actual owner. This to my mind is not inconsistent with the determination in the earlier action that Manning was a trespasser on the larger parcel of land. Indeed adverse possession is founded on the fact of a continuous act of trespass extending over a 16 year period.

16. It seems to me that in all the circumstances of the case, subject to the estoppels that arise with respect to Manning, the Claimants ought to be allowed to pursue their action and put their case before the court. In this regard with respect to those Claimants the order in the earlier action will be another fact to be considered at the trial. In other words while the other Claimants are not bound by the facts that form the basis of that order the order remains a valid order the existence of which they cannot dispute.

17. In the circumstances I am of the opinion that a cause of action estoppel arises between Des Vignes and Manning with respect to the issue of her tenancy of the 2500 ft.² of land and her trespass on to the larger parcel of land. I find that insofar as the Claimants seek an order pursuant to the Land Tenants Security of Tenure Act the statement of case discloses no grounds to do so and in the circumstances paragraph 20 and the reliefs sought at paragraphs (v) and (vi) are struck out. I am however not satisfied that to allow the Claimants to pursue the remaining cause of action amounts to an abuse of the process.

18. In the circumstances, subject to the estoppels that arises with respect to the Third Claimant's claim, the Claimants shall be entitled to pursue their claim in adverse possession.

Costs

Dated this 26th day of September, 2012

Judith Jones
Judge